

未成年人之 醫療決定與自主 ——臺灣規範現況與評析

Current Status of the Regulations Governing
the Medical Decision and
Autonomy of Minors in Taiwan

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摘要

未成年人隨著年齡的不同，心智成熟度不一，當需要進行醫療行為時，是否自為同意已足，或需要輔助同意或代理同意，又是否依不同的醫療措施而有不同的規定，是對於未成年人醫療權益保護的重要議題。本文介紹醫事法規中有關未成年人醫療同意規定，並從中整理分析其規範全貌。我國法對未成年人醫療同意之立場，大致上以年齡作為區隔，界定單獨同意／輔助同意／代理同意的界線，亦規範有未成年人不得接受的醫療措施。醫事法係我國近年來進步甚快的法領域，個別醫事法規均分別經歷多次修法歷程，本文也

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將分析目前我國法在未成年醫療決定規範上之疑義與可能進步的方向。

The mental maturity of minors changes with age. Whether minors can consent on their own or require joint consents or surrogate consents from their parents or guardians prior to undergoing medical procedures; and whether relevant regulations should vary according to the medical plans to be adopted for the minors are crucial topics to be addressed to protect the autonomy of minors. This study discussed and analyzed regulations related to minors' informed consents in Taiwan's medical laws. Generally, the full capacity for consents and the requirements for joint consents and surrogate consents are separated by age. Medical laws in Taiwan have evolved at a rapid pace, and individual acts in these laws have underwent multiple amendments. This study also analyzed the problems underlying existing regulations governing minors' informed consents in Taiwan as well as offered suggestions for improvement.

壹、緒論

執行醫療措施前，醫療機構與醫師應充分告知重要資訊，使病人完整了解後做出決定，如是基於尊重病人自主權之告知後同意法則，目前已為台灣社會肯認，許多醫事法規也彰顯其精神。告知後同意法則係建立於假設病人為理性，而病人自身是最了解自己情況與需求的人，可以為自己最佳利益作出決定；因此，對於心智成熟度不一的未成年人，若為保護其就醫之最佳利益，醫療決定應由誰做出或參與，是一個困難的問題。待思考的問題包括：由誰做出醫療決定／由誰同意？未成年人於如何的心智成熟度或年齡，得以對所需的醫療做出決